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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GENE DARROUGH, an individual, on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

SOC LLC, a Delaware limited liability
company; SOC-SMG, Inc., a Nevada
corporation; DAY & ZIMMERMANN, INC., a
Maryland corporation; and DOES 1-20,
inclusive,

Defendants.

Case No.: 2:20-cv-01951-APG-BNW

**CONSENT MOTION AND ORDER TO
STAY BRIEFING DEADLINE TO
COURT'S ORDER TO SHOW CAUSE**

[FIRST REQUEST]

Pursuant to LR IA 6-1, LR IA 6-2, and LR 7-1, Defendants SOC LLC (“SOC”), SOC-SMG, Inc. (SOC-SMG”), and Day & Zimmermann, Inc. (“Day & Zimmermann”) (collectively, “Defendants”), hereby respectfully request this Court stay its order for Defendants to show cause by November 12, 2021 (ECF No. 32) until 21 days after the Ninth Circuit rules whether federal subject matter jurisdiction exists over the related action *DeFiore v. SOC LLC*, No. 2:20-cv-01981-

1 APG-EJY.

2 “[T]he power to stay proceedings is incidental to the power inherent in every court to
3 control the disposition of the causes on its docket with economy of time and effort for itself, for
4 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Where there is a
5 separate proceeding, a trial court may “find it is efficient for its own docket and the fairest course
6 for the parties to enter a stay of an action before it, pending resolution of independent proceedings
7 which bear upon the case.” *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863–64
8 (9th Cir. 1979). A stay may be appropriate if “it appears likely the other proceedings will be
9 concluded within a reasonable time in relation to the urgency of the claims presented to the court.”
10 *Id.*

11 This Action and *DeFiore* are related cases arising from a previously dismissed class action
12 captioned *Risinger v. SOC LLC*, No. 2:12-cv-00063-MMD-BNW. *See* Order 2–3, ECF No. 32.
13 All three cases involve allegations from security guards against Defendants (private security
14 contractors) concerning hiring practices and working conditions in Iraq during the Iraq War. *See*
15 *id.* The only difference between the cases are the plaintiffs. This Action is a putative class action
16 comprised of a subset of class members from *Risinger* and *DeFiore* is a multi-plaintiff action
17 comprised of select class members from *Risinger*. *See id.* at 3–4. Plaintiffs in this Action and
18 *DeFiore* originally filed their complaints in Nevada state court and Defendants removed them to
19 this Court. *See id.* at 3–4.

20 Defendants asserted removal was proper for this Action under three separate bases: (1)
21 diversity jurisdiction, (2) the Class Action Fairness Act, and (3) the Federal Officer Removal
22 Statute. *See* Notice of Removal, ECF No. 1. This Court agreed that it had federal subject matter
23 jurisdiction over this Action pursuant to CAFA without addressing the other grounds for removal.
24 *See id.* at 4. In *DeFiore*, Defendants asserted removal was proper under the Federal Officer
25 Removal Statute. *See* Order 3. But this Court was not satisfied that the Federal Officer Removal
26 Statute applied in *DeFiore* and therefore granted Plaintiffs’ Motion to Remand. *See id.*

27 In *DeFiore*, Defendants appealed this Court’s order remanding the action to state court.
28 *See* ECF No. 36. Plaintiffs and Defendants fully briefed whether the Federal Officer Removal

1 Statute applies to Defendants' alleged actions in Iraq, which gave rise to the *DeFiore* dispute (and
2 this Action and the prior *Risinger* action). *See generally DeFiore v. SOC LLC*, No. 21-15261 (9th
3 Cir. Feb. 16, 2021). Moreover, the parties conducted oral argument before the Ninth Circuit on
4 November 8, 2021. The parties now await a ruling by the Ninth Circuit as to whether federal
5 subject matter exists pursuant to the Federal Officer Removal Statute.

6 Following removal of this Action, Defendants moved to dismiss the putative class claims
7 and Darrough's individual claims. *See* Mot. Dismiss, ECF No. 17. This Court granted
8 Defendants' motion in part, dismissing the putative class action claims and ordering Defendants
9 to show cause as to why this Action should not be remanded now that CAFA does not provide
10 federal subject matter jurisdiction. *See* Order 10. For this Court to have continued subject matter
11 jurisdiction over this Action, it must find support from either the Federal Officer Removal Statute
12 or diversity jurisdiction.

13 Because the application of Federal Officer Removal Statute is currently pending before the
14 Ninth Circuit, and because the Ninth Circuit's ruling in *DeFiore* will necessarily affect briefing in
15 response to this Court's order to show cause in this Action, Defendants respectfully request this
16 Court stay Defendants' deadline to show cause, which is currently set for November 12, 2021,
17 until 21 days after the Ninth Circuit files its opinion in *DeFiore*.

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1 WHEREFORE, and with consent by Plaintiff, Defendants respectfully request this Court
2 grant this motion to stay its deadline to show cause by November 12, 2021 until 21 days after the
3 Ninth Circuit files its opinion in *DeFiore* concerning the Federal Officer Removal Statute.

4 DATED this 10th day of November, 2021.

5 LEWIS ROCA ROTHGERBER CHRISTIE
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7
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27 *Attorneys for Defendants*

28 **ORDER**

IT IS SO ORDERED:



UNITED STATES DISTRICT JUDGE

DATED: November 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2021, I caused a true and accurate copy of the foregoing document entitled **CONSENT MOTION AND ORDER TO STAY BRIEFING DEADLINE TO COURT'S ORDER TO SHOW CAUSE [FIRST REQUEST]** to be filed via the Court's CM/ECF system, which will accomplish service on all parties of record through their counsel.

/s/ Dana K. Provost
An Employee of Lewis Roca Rothgerber Christie LLP

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